

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Orji Ibe Otah,)
Petitioner,) Cr. No.: 7:93-cr-00371-GRA
v.)
United States of America,) **ORDER**
Respondent.) (Written Opinion)

)

This matter is before the Court to review Magistrate Judge Kevin F. McDonald's Report and Recommendation, filed on April 25, 2012. *See* ECF No. 86. For the reasons stated herein, this Court adopts the magistrate's Report and Recommendation in its entirety.

On April 4, 1994, Petitioner Orji Ibe Otah pled guilty to money laundering. On May 31, 1994, Petitioner was sentenced to forty-six (46) months imprisonment followed by three (3) years of supervised release. Petitioner never filed a notice of appeal. On September 12, 2011, Petitioner filed the instant motion with this Court asking to vacate his conviction. Petitioner did not object to the treatment of the Motion to Vacate Conviction as a § 2255 petition. He contends that his trial counsel was ineffective for failed to advise him of the immigration consequences that could result from entering a guilty plea and that

his guilty plea was not made knowingly and voluntarily. The magistrate recommends denying and dismissing Petitioner's complaint because it is time-barred.

The magistrate makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). This Court may also "receive further evidence or recommit the matter to the magistrate with instructions." *Id.* In the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Petitioner has made no objections to the magistrate's Report and Recommendation.

After a thorough review of the record, magistrate's Report and Recommendation, and the relevant case law, this Court finds that the magistrate applied sound legal principles to the facts of this case. Therefore, this Court

adopts the magistrate's Report and Recommendation in its entirety. The Court declines to issue a certificate of appealability in this matter.¹

IT IS THEREFORE ORDERED that Petitioner's § 2255 Motion is DENIED and this matter is DISMISSED.

IT IS SO ORDERED.



G. Ross Anderson, Jr.
Senior United States District Judge

May 31, 2011
Anderson, South Carolina

¹ When a district court issues a final ruling on a habeas petition, the court must issue or deny a certificate of appealability. See Rule 11(a) of the Rules governing 28 U.S.C. § 2254 & 2255. The Court has reviewed its order and, pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 cases, declines to issue a certificate of appealability as petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322 (2003) (to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong) (*citing Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).